

On June 28, 1934, the United States attorney for the Western District of Arkansas, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Fred Gordon, Watts, Okla., alleging shipment by said defendant in violation of the Food and Drugs Act, on or about September 20 and September 29, 1932, from the State of Arkansas into the State of Oklahoma, of quantities of apples which were adulterated.

The article was alleged to be adulterated in that it contained added poisonous and deleterious ingredients, namely, arsenic and lead, which might have rendered it injurious to health.

On January 8, 1935, the defendant entered a plea of guilty and the court imposed a fine of \$1.

*M. L. WILSON, Acting Secretary of Agriculture.*

**24189. Alleged adulteration of apples. U. S. v. Lee Smith. Tried to the court. Judgment of not guilty. (F. & D. no. 31399. Sample no. 25360-A.)**

On May 3, 1934, the United States attorney for the Western District of Arkansas, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Lee Smith, trading at Springdale, Ark., alleging shipment by said defendant in violation of the Food and Drugs Act, on or about September 26, 1932, from the State of Arkansas into the State of Oklahoma of a quantity of apples which were adulterated.

The article was alleged to be adulterated in that it contained added poisonous and deleterious ingredients, namely, arsenic and lead, which might have rendered it injurious to health.

On May 31, 1934, a jury having been waived, the defendant was tried to the court and was adjudged not guilty.

*M. L. WILSON, Acting Secretary of Agriculture.*

**24190. Adulteration of butter. U. S. v. Henry W. Ipsen (Cuba City Creamery). Tried to a jury. Verdict of guilty. Fine, \$50 and costs. (F. & D. no. 31404. Sample no. 22225-A.)**

This case was based on an interstate shipment of butter which contained less than 80 percent by weight of milk fat.

On January 30, 1934, the United States attorney for the Western District of Wisconsin, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Henry W. Ipsen, trading as the Cuba City Creamery, Cuba City, Wis., alleging shipment by said defendant in violation of the Food and Drugs Act, on or about May 8, 1933, from the State of Wisconsin into the State of Iowa, of a quantity of butter which was adulterated.

The article was alleged to be adulterated in that a product containing less than 80 percent by weight of milk fat had been substituted for butter, a product which must contain not less than 80 percent by weight of milk fat, as defined by the act of Congress of March 4, 1923, which the article purported to be.

On November 12, 1934, the case came on for trial before a jury. At the conclusion of the testimony the court delivered the following charge to the jury (Stone, district judge):

✓ **The Court:** Gentlemen of the jury, as you know now, the defendant in this case is charged with unlawfully shipping butter from Cuba City, Wisconsin, to Dubuque, Iowa, on the 8th day of May, 1933.

The Federal statute prohibits the shipments of butter from one State to another containing less than 80 percent butterfat, and the Government contends in this case that the defendant violated that statute in that he shipped butter from Cuba City to Dubuque, Iowa, containing less than 80 percent butterfat, containing butterfat of 78.03 and butterfat of 78 percent.

There has been some testimony here that the witness Conzett acted as the agent and employee of the defendant. It is the law that what one man may do himself he may do through an agent or employee, and any act of the employee or agent is considered in law the act of the employer or principal.

Every person accused of crime must be presumed to be innocent, and that presumption must prevail and prevent a conviction unless he is finally proven guilty. The defendant is not under any obligation to prove his innocence, but is presumed to be innocent, and the burden rests upon the Government to prove that he is guilty beyond all reasonable doubt. That presumption attends the defendant throughout the trial, and before you have a right to find him guilty of any crime every member of the jury must be convinced by a full considera-

ton of all the evidence beyond all reasonable doubt that he is guilty. If the evidence fails to so convince you, it is your duty to acquit him.

It is the duty of the jury to reconcile the evidence with the presumption of innocence if it can be done reasonably, but if, after a fair and reasonable consideration of all the evidence, the jury become satisfied beyond all reasonable doubt that the defendant is guilty, then you should of course find him guilty.

You should distinguish between a reasonable doubt and one that is not reasonable. A doubt which is merely fanciful, which ignores a reasonable interpretation of the evidence, or arises merely from sympathy or from fear to return a verdict of guilt, is not a reasonable doubt. A reasonable doubt is one for which a good reason can be given, based upon the nature or insufficiency of the evidence in the case.

Guilt is proved beyond a reasonable doubt when all the evidence fully and fairly considered is sufficient to produce in the mind of an ordinarily intelligent person, a prudent juror, a conviction of the defendant's guilt so clear that he would act thereon without hesitation if it related to the most important affairs of his life.

Now, gentlemen, you are the judges of the credibility and the weight that should be given to the testimony of the different witnesses who have testified in this case. In determining such credibility and weight you should consider their interest, if any has been shown, in the result of the trial, their feeling, bias, or prejudice, if any has been shown, their demeanor while upon the witness stand, their means of information, the extent of their opportunity for knowing or observing the matters and things testified to by them, the clearness or lack of clearness of their recollection, as well as their apparent disposition to be truthful, and to truthfully and impartially testify to the matters and things given in evidence by them, and you will give such credit and weight to the testimony of each witness as you may deem it to be entitled to.

The weight of the evidence is not to be decided merely according to the number of witnesses on each side. You may find that the testimony of one witness is entitled to more credibility than another witness, or several other witnesses, and you may give to the testimony of such witness such weight as you deem it entitled to.

If you believe or conclude that any witness has testified falsely in regard to any material fact in this case you are at liberty to disregard all his testimony unless it is corroborated by other credible evidence.

As I have stated, the burden of proof is upon the Government to satisfy you by evidence beyond a reasonable doubt of the guilt of the defendant; and by burden of proof in this case is meant the duty resting upon the Government to satisfy the minds of the jury beyond all reasonable doubt of the guilt of the defendant.

In case the evidence fails to satisfy you beyond all reasonable doubt the defendant is guilty as charged in the indictment, then you should acquit him.

If, on the other hand, you are satisfied from the evidence beyond all reasonable doubt that the defendant is guilty of the offense charged, then you should return a verdict of guilty.

You must scrutinize the evidence with the utmost caution and care, and bring into that duty the reason and prudence you exercise in the most important affairs of your life, in fact, all the judgment, caution, and discrimination you possess, and if, after such scrutiny, you entertain no reasonable doubt of the guilt of the accused, you will convict; otherwise acquit.

If it is possible to reasonably reconcile the facts shown in evidence with the innocence of the defendant, it is your duty to do so.

Now, this is an important case. The amount involved is not much in dollars and cents, but this Federal statute was enacted for a purpose, for the purpose of protecting the public and protecting the manufacturer of food, and I want you to give the case the consideration it deserves, and I know that you will.

In considering this case I do not want you to be influenced by any feeling of prejudice or sympathy for or against the defendant. Just determine this case and reach your verdict on the evidence that you have heard here in court and upon the instructions I have given you.

Are there any exceptions or any suggestions from counsel?

Mr. STEPHENS: If the court please, I would like to have the court instruct the jury something to this effect; that unless you are satisfied beyond a reasonable doubt from a fair and impartial consideration of the evidence

presented that the butter contained in exhibits 4 and 5 was the butter of the defendant, your verdict will be not guilty.

The COURT: Yes; I think that is a fair instruction. If you are satisfied that this butter was not the butter that was manufactured and shipped by the defendant, then of course you will find the defendant not guilty.

On the other hand, if you are satisfied from the evidence beyond all reasonable doubt that this butter was manufactured by the defendant and shipped by him to Dubuque, and that it contained less than 80 percent butterfat, then of course your verdict will be otherwise.

Are there any other suggestions?

Mr. HANSON: None.

The COURT: The clerk may swear an officer. I have prepared, gentlemen, forms of verdict for you, which read as follows: After the title of the case, "We, the jury, duly impaneled and sworn to try the issues in the above entitled action, for our verdict find the defendant guilty as charged in the information."

That is the one you will use if you find the defendant guilty.

If you find the defendant not guilty you will use the other verdict, which reads as follows: After the title of the case,

"We, the jury, duly impaneled and sworn to try the issues in the above entitled action, for our verdict find the defendant not guilty."

The jury retired and after due deliberation returned a verdict of guilty, and the court imposed a fine of \$50 and costs.

M. L. WILSON, *Acting Secretary of Agriculture.*

**24191. Misbranding of cottonseed meal. U. S. v. The Clarksville Cotton Oil Co. Plea of guilty. Fine, \$5 and costs. (F. & D. no. 31416. Sample no. 18928-A.)**

This case was based on an interstate shipment of cottonseed meal but contained less than 43 percent of protein, the amount declared on the label.

On February 7, 1934, the United States attorney for the Eastern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the Clarksville Cotton Oil Co., a corporation, Clarksville, Tex., alleging shipment by said company in violation of the Food and Drugs Act, on or about November 25, 1932, from the State of Texas into the State of Missouri of a quantity of cottonseed meal which was misbranded. The article was labeled in part: "43 Per Cent Protein Cotton Seed Meal, Prime Quality Manufactured By The Clarksville Cotton Oil Co. Clarksville, Texas Guaranteed Analysis: Crude Protein, not less than 43.00 Per cent."

The article was alleged to be misbranded in that the statement on the label, "Guaranteed Analysis: Crude Protein not less than 43.00 Per Cent", was false and misleading, and for the further reason that it was labeled so as to deceive and mislead the purchaser, since it contained less than 43 percent of protein, namely, 39.57 percent of protein.

On January 7, 1935, a plea of guilty was entered on behalf of the defendant company, and the court imposed a fine of \$5 and costs.

M. L. WILSON, *Acting Secretary of Agriculture.*

**24192. Adulteration of apples. U. S. v. James C. Palumbo (J. C. Palumbo Fruit Co.). Plea of guilty Judgment against defendant for costs. (F. & D. no. 31417. Sample no. 25423-A.)**

Examination of the apples in this case showed the presence of arsenic and lead in amounts that might have rendered them injurious to health.

On April 7, 1934, the United States attorney for the District of Idaho, acting upon a report by the Secretary of Agriculture, filed in the district court an information against James C. Palumbo, trading as the J. C. Palumbo Fruit Co.) at Payette, Idaho, alleging shipment by said defendant in violation of the Food and Drugs Act on or about February 24, 1933, from the State of Idaho into the State of Missouri of a quantity of apples which were adulterated. The article was labeled in part: (Basket) "La Paluma Brand \* \* \* Winesap \* \* \* J. C. Palumbo Fruit Co. Payette, Idaho."

The article was alleged to be adulterated in that it contained added poisonous and deleterious ingredients, arsenic and lead, which might have rendered it injurious to health.

On November 1, 1934 the defendant entered a plea of guilty. The judgment of the court was that the defendant pay costs of proceedings.

M. L. WILSON, *Acting Secretary of Agriculture.*